

No. 10135

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IN THE

**United States**

**Circuit Court of Appeals**

FOR THE NINTH CIRCUIT

---

BYRON J. DOLPHIN, sometimes known as  
B. J. DOLPHIN, and DOLPHIN'S  
NATURAL BARKS,

*Appellant,*

*vs.*

GEORGE E. STARR, United States  
Postmaster at Seattle, King County,

*Appellee.*

Washington,

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UPON APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE WESTERN DISTRICT OF WASHINGTON,  
NORTHERN DIVISION

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HONORABLE JOHN C. BOWEN, *Judge*

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**BRIEF OF APPELLEE**

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J. CHARLES DENNIS  
*United States Attorney*

GERALD SHUCKLIN  
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OFFICE AND POST OFFICE ADDRESS:  
1012 UNITED STATES COURT HOUSE.  
SEATTLE, WASHINGTON.

**FILED**

**JUL 16 1942**



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## INDEX

	PAGE
STATEMENT OF THE CASE.....	1
ARGUMENT .....	3
CONCLUSION .....	4

## TABLE OF CASES CITED

<i>Association for Legalizing American Lotteries, Inc.</i> , 85 Fed. (2d) 67.....	4
<i>Golden Stakes Advertising Co. vs. Goldman</i> , 85 Fed. (2d) 68 .....	4
<i>Moody vs. Johnston</i> , 66 Fed. (2d) 999.....	4
<i>Moore vs. Anderson</i> , 68 Fed. (2d) 191.....	4
<i>National Conference on Legalizing Lotteries, Inc. vs. Goldman</i> , 85 Fed. (2d) 66.....	4
<i>Neher vs. Harwood</i> (No. 10042, decided June 5, 1942) .....	3
<i>Warner Valley Stock Co. vs. Smith</i> , 165 U. S. 28..	3
<i>Webster vs. Fall</i> , 266 U. S. 507.....	3

## TABLE OF STATUTES CITED

Secs. 259 and 732, Title 39, U.S.C.....	2
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STATEMENT OF THE CASE

On September 17, 1941, the Postmaster General issued a "fraud" order finding that Dolphin's Natural Barks, Byron J. Dolphin, B. J. Dolphin, and their officers and agents at Seattle, Washington, were

engaged in conducting a scheme or device for obtaining money through the mail by means of false and fraudulent pretenses, representations and promises in violation of Sections 259 and 732, Title 39, United States Code (Tr. 9). The order forbade the payment of any Postal money order drawn to the order of said concerned parties, and that all letters and other mail matter were to be returned by the Postmaster at the offices at which they were originally mailed and to be delivered to the senders with the words "Fraudulent; Mail to this Address returned by order of Postmaster General."

In an action filed in the United States District Court at Seattle, Washington, appellant sought to have the Court review the action of the Solicitor General of the Post Office Department and the Postmaster General. The prayer of the complaint asked that Postmaster George E. Starr, of Seattle, Washington, be restrained from in any manner enforcing the order of the Postmaster General of September 17, 1941 (Tr. 2-8). George E. Starr, Postmaster at Seattle, Washington, was the only party defendant named in the action; the Postmaster General was not made a party defendant. A motion to dismiss was interposed on behalf of the local Postmaster (Tr. 23) and the District Court entered an order of dismissal



(Tr. 25), from which appellant appeals.

The order of dismissal was based on the fact that the acts alleged to have been done by the Postmaster at Seattle were done at all times only pursuant to the directions and instructions of the Postmaster General of the United States of America, under the terms of the "Fraud Order," and that it further appeared the Postmaster General of the United States was a necessary party. The Court found there was want of a necessary party and therefore ordered a dismissal of the action (Tr. 25).

## ARGUMENT

The issues in this case have been recently passed upon in this circuit in *Neher v. A. E. Harwood, Postmaster*, No. 10042, decided June 5, 1942. This case is so recent and discusses with so great detail the exact question here that it is only necessary to cite this authority to the Court. The conclusion reached is that the Postmaster General is an indispensable party in an action of this kind; that the lower court was correct in dismissing the action. Other cases on which appellee relies and which are cited in *Neher v. Harwood, supra*, are as follows:

*Warner Valley Stock Co. vs. Smith*,  
165 U. S. 28;

*Webster vs. Fall*, 266 U. S. 507;

*Moody vs. Johnston*, 66 Fed. (2d) 999;  
*Moore vs. Anderson*, 68 Fed. (2d) 191;  
*National Conference on Legalizing Lotteries, Inc.,  
vs. Goldman*, 85 Fed. (2d) 66;  
*Association for Legalizing American Lotteries,  
Inc.*, 85 Fed. (2d) 67;  
*Golden Stakes Advertising Co. vs. Goldman*,  
85 Fed. (2d) 68.

## CONCLUSION

Appellee respectfully represents that the decision of the lower court should be affirmed.

Respectfully submitted,

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